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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEC 13 P 3:16

CIVIL ACTION NO. 04-12098

GREGORY F. SANKEY,
Plaintiff

v.

THE SHAW GROUP, INC. and
STONE & WEBSTER, INC.,
Defendants

**DEFENDANTS'
MOTION TO DISMISS
COUNTS 9, 11, and 12
PURSUANT TO RULE 12(b)(6)**

The Defendants, Stone & Webster, Inc. ("S&W") and The Shaw Group, Inc. (collectively with S&W, the "Defendants"), by and through their attorneys Nelson, Kinder, Mosseau & Saturley, P.C., hereby move to dismiss Count 9 (Violation of the Massachusetts Civil Rights Act), Count 11 (Economic Duress) and Count 12 (Violation of M.G.L.c. 93A) of the Plaintiff, Gregory F. Sankey's ("Sankey") Amended Complaint pursuant to Fed.R.Civ.P. 12(b)(6), as such counts fail to state claims upon which relief may be granted.

INTRODUCTION

This lawsuit arises out of Gregory F. Sankey's ("Sankey") failed efforts to procure a job as a vice-president with S&W in 2001. Sankey filed an Amended Complaint (the "Complaint") against S&W and Shaw containing 12 counts for relief, all arising from S&W's decision not to hire Sankey. The legal theories asserted in Counts 9, 11, and 12 of the Complaint do not apply to the case at bar, and accordingly, should be dismissed.

COUNTS 9, 11, AND 12 OF THE COMPLAINT
FAIL TO STATE CLAIMS UPON WHICH RELIEF MAY BE GRANTED

Count 9 of the Amended Complaint (Violation of the Massachusetts Civil Rights Act) fails as a matter of law, as Sankey has not pled, and will not be able to prove, that the Defendants interfered with his constitutional rights through force, intimidation or coercion. Count 11 of the Complaint (Economic Duress) fails as Massachusetts courts have not recognized an affirmative cause of action for Economic Duress, and because Sankey has not pled, and will not be able to prove that the Defendants compelled him to contract with them. Count 12 of the Complaint (Violation of M.G.L.c. 93A) fails as M.G.L. c. 93A does not apply to disputes arising out of the employment relationship.

The Defendants provide the attached Memorandum of Law in further support of this Motion.

WHEREFORE, the Defendants, Stone & Webster, Inc. and The Shaw Group, Inc. respectfully request that this Court:

- A. Dismiss Counts 9, 11, and 12 of the plaintiff's Amended Complaint;
- B. Award attorneys' fees and costs; and
- C. Order such other relief as this Court deems just and proper.

Respectfully submitted,

THE SHAW GROUP, INC. and STONE &
WEBSTER, INC.

By its attorneys:

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Richard C. Nelson, Esquire (BBO # 653790)
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CERTIFICATE OF SERVICE

I, Kenneth E. Rubinstein, Esquire, hereby certify that the foregoing Motion to Dismiss was this day forwarded to Anthony R. Bott, Esquire, 8 Beach Road, P.O. Box 1137, East Orleans, Massachusetts 02643, Counsel for Gregory Sankey.

Dated: December 13, 2004

By: Ken Rubinstein / PR
Kenneth E. Rubinstein, Esquire